

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:12-cv-69-H

ROSE LORENZO, and all others similarly
situated,

Plaintiff,

v.

PRIME COMMUNICATIONS, L.P.,

Defendant.

**MOTION IN ACCORDANCE WITH
THE COURT'S ORDER [DE 398] ON
PRIOR PETITION FOR AWARD
OF ATTORNEYS' FEES AND COSTS
AND MOTION TO STRIKE [DE 247, 261]**

NOW COMES Plaintiff Rose Lorenzo, on behalf of herself and all others similarly situated (collectively "Plaintiffs"), and hereby renews Plaintiffs' Petition for Attorney's Fees and Costs ([DE 247]) and Motion to Strike ([DE 261]) without further briefing by either party, pursuant to Court Order entered September 18, 2017, [DE 398], and in support hereof, respectfully show:

1) On August 31, 2016, nineteen (19) Plaintiffs filed notice of acceptance of Rule 68 Offers of Judgment served on or about August 15, 2016. [DE 212, 212-1].

2) By Memorandum and Recommendation entered September 14, 2016, United States Magistrate Judge Kimberly A. Swank recommended the clerk be directed to enter final judgment as to those accepted Rule 68 Offers of Judgment. [DE 214]. No objections were filed.

3) On October 26, 2016, United States District Judge Malcolm J. Howard adopted the findings of the Memorandum and Recommendation as its own, directed the clerk to enter final judgment as to those accepted Rule 68 Offers of Judgment, and Plaintiffs were allowed

fourteen (14) days from the entry of judgment to submit a bill of costs pursuant to Rule 54(d)(1) and post-judgment motions for other costs or expenses pursuant to Rule 54(d)(2). [DE 223].

4) Thereafter, and within fourteen days, on November 9, 2016, Plaintiffs, as the prevailing party, filed their Petition for Award of Attorney's Fees and Costs, Memorandum in Support, and Exhibits [DE 247, 248, 260] seeking reasonable attorneys' fees in the amount of \$120,215.28 and costs in the amount of \$4,664.14.

5) Following contested extension, on December 16, 2016, Defendant Prime Communications filed Memorandum in Opposition to Plaintiffs Petition for Attorney's Fees and Costs with Exhibits. [DE 257, 258].

6) Plaintiffs Moved to Strike, in whole or in part, Defendant's Memorandum and Exhibits, to which Prime opposed, and Plaintiffs filed a Reply. [DE 261, 262, 276, 279].

7) By Text Order entered January 23, 2017, [DE 277], the Court directed the clerk to temporarily seal Prime's Memorandum in Opposition and Exhibits [DE 257-258], pending decision on Plaintiffs' Motion to Strike.

8) Prior to ruling on Plaintiffs' Petition for Award of Attorney's Fees and Costs, and following an August 7-8, 2017 court-hosted settlement conference with United States Magistrate Judge Robert B. Jones, Jr., the parties reached agreement in principle to settle the remaining FLSA claims in this matter, excluding fees.

9) Following Court inquiry as to the outstanding FLSA related motions, with an eye toward resolution of all FLSA related motions, on or about September 18, 2017, the parties agreed to withdrawal of Plaintiffs' motion for fees and costs [DE 247] and motion to strike [DE 261] without prejudice to Plaintiffs right to refile the motions and supporting memoranda

without further briefing by either party, and the Court entered its Order confirming withdrawal and the terms for refiling. [DE 398].

10) The parties' mediation of FLSA related fees and costs to be determined by the Court on Judgments entered for the First, Third, Fourth & Eighth Offers of Judgment and FLSA Settlement Plaintiffs on March 6-7, 2018 was unsuccessful.

WHEREFORE, pursuant to Court Order dated September 18, 2017 [DE 398], Plaintiffs respectfully re-submit their prior Petition for Award of Attorney's Fees in the amount of \$120,215.28 and Costs in the amount of \$4,664.14, supporting and opposing memoranda and exhibits attached thereto, [DE 247-248, 257, 258, 260], and Plaintiffs' Motion to Strike Defendant's Opposition, supporting and opposing memoranda and exhibits attached thereto [DE 261, 262, 276, 279].

This 7th day of March, 2018.

Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION IN ACCORDANCE WITH THE COURT'S ORDER [DE 398] ON PRIOR PETITION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND MOTION TO STRIKE [DE 247, 261] with the Court's CM/ECF system, which will send notification electronically to the following counsel of record:

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This 7th day of March, 2018

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